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California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RITA GARCIA et al.,

Plaintiffs and Appellants,

v.

CITY OF FULLERTON et al.,

Defendants and Respondents.

G025381

(Super. Ct. No. 771077)

ORDER MODIFYING
OPINION AND DENYING
PETITIONS FOR REHEARING
AND REQUEST FOR
PARTIAL PUBLICATION;
NO CHANGE IN JUDGMENT

The opinion filed in this case on August 29, 2002, is hereby ordered modified as follows:

On page 12, footnote 5 should be modified to read: “Of course, if the plaintiffs successfully prove the defendants are equitably estopped from invoking the bar of the claims statute, they will have no basis for their cover-up claim under 42 U.S.C. § 1983. In their petition for rehearing, the City claims the conspiracy and cover-up claim is moot in any event, citing *Christopher v. Harbury* (2002) ___ U.S. ___ [122 S.Ct. 2179]. *Christopher* was filed after this case was submitted and was first called to our attention in the rehearing petition. There, the Supreme Court held a “denial of access to courts” case under 42 U.S.C. section 1983 cannot stand alone but must be based on a valid underlying cause of action that is rendered ineffective by the wrongful actions of a public official. (*Id.* at pp. 2186-2187.) The City argues if the Garcias fail to prove

estoppel, they will not be able to prove that a cover-up caused the loss of the wrongful death cause of action because they rely on the same facts for both. In *Christopher*, however, the plaintiff's state law cause of action existed independently from the denial of access cause of action. As the court remarked, "There is, after all, no point in spending time and money to establish the facts constituting denial of access when a plaintiff would end up just as well off after litigating a simpler case without the denial-of-access element." (*Id.* at p. 2187.) Here, there will be no duplication of evidence because, as the City points out, the estoppel and the cover-up evidence are the same. We prefer to leave it to the trial court to sort out the results of the proceedings on remand."

This modification does not effect a change in judgment. The petitions for rehearing from Respondents, City of Fullerton, filed September 12, 2002, and from Appellants, Rita Garcia, filed September 13, 2002, are DENIED.

The request that our opinion filed on August 29, 2002, be certified for partial publication is DENIED. The opinion follows established law and does not meet any of the standards for publication set forth in California Rules of Court, rule 976(b).

Pursuant to California Rules of Court, rule 978, the clerk of this court is directed to transmit a copy of the request, our opinion, and this order to the Supreme Court. It is our recommendation that the request to partially publish be DENIED.

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

BEDSWORTH, J.